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FC IP Group Report

Submitted by:
FC IP



The content of this document is an extraction from the CGIAR 2013 Intellectual Assets Report, covering the independent section of the Fund Council's IP Group.

8. FC IP Group independent section

8.1 Introduction

This section presents the FC IP Group's findings of the second review of the Centers' implementation of the IA Principles, based on information made available to the FC IP Group by the Consortium. The reporting window was limited to calendar year 2013, and the information reviewed included the Consortium's Consolidated IA Report (which included all Center IA Reports) as well as discussions with Elise Perset and Moses Muchiri (the Consortium's legal team) on April 8-11, 2014 in Montpellier. During the meetings in Montpellier, the FC IP Group raised some questions about the Centers' reports, which were then sent to the relevant Centers by the Consortium. Responses to those follow-up questions have further informed the conclusions in this section. The findings, opinions and recommendations discussed in more detail hereafter represent the FC IP Group Members' professional views in their advisory role and do not reflect the views of the organizations or entities with which the Members are affiliated. Overall there was significant progress in terms of reporting, compliance, IP capacity and adoption of best practices.

8.2 Comments on the Consolidated IA Report and the Centers' IA Reports

The FC IP Group reviewed and commented on the Consolidated IA Report prepared by the Consortium Office (CO). Taking the first year of implementation and review as a marker, the FC IP Group agrees with the Consortium that overall substantive gains have been made across the CGIAR Consortium in terms of reporting, compliance with inclusion of the research and emergency exceptions when required, IP capacity and adoption of best practices. Overall reporting has strongly improved across the board. All Center IA Reports followed a clear and standardized template, and most reports contained sufficient information for the FC IP Group to make a proper and full assessment of compliance with the IA Principles. Some Centers provided information not only on agreements taking place during the reporting window, but also on ongoing agreements, partnerships and success stories, excerpts of the agreements and robust overviews of their current IP portfolios.

8.3 Positive Developments/Highlights

- The Consortium shared with the FC IP Group the "Update to the Fund Council on Intellectual Asset Reporting"¹ as well as the "Consortium Responses to Comments and Recommendations from the FC IP Group Report for 2012"² which the Consortium developed to address the donors' requests made during FC 10 (Nairobi, 2013). The FC IP Group is happy to observe that the measures taken by the Consortium to ensure compliance are strong. It should also be noted that the Consortium has significantly

¹ Annex 1 of the CGIAR Consortium Report to FC 11 (May 2014) available at <https://library.cgiar.org/bitstream/handle/10947/3013/3-CO%202013%20Report.pdf?sequence=1>

² Made available to donors by the Fund Office after FC 11 (May 2014)



strengthened its oversight role, including more constant communication with the Centers and the FC IP Group.

- As of April 2014, all Centers have reviewed their policies to make them consistent with the CGIAR Principles or indicated on-going processes of either reviewing existing or making new IA/IP related policies in 2013. The Consortium reviewed and commented on the Centers' IP policies for consistency with CGIAR IA Principles. A few Centers' IP policies are waiting for Board of Trustee approval in 2014. The FC IP Group recommends, and the Consortium agrees, that Centers should make their IP Policies publicly available.
- The FC IP Group commends the Consortium's leadership of the CGIAR Legal/ IP Network (CLIPnet) community of practice, established to share information on best practices and leverage experiences on the implementation of the CGIAR IA Principles amongst Centers and the Consortium Office. At the next CLIPnet meeting the FC IP Group plans to make a presentation on the CGIAR IA Principles and the donors' perspectives, requirements and expectations.
- In consultation with the FC IP Group, the Consortium is also developing a Questions and Answers document on compliance with the CGIAR IA Principles drawing on lessons learned from the first two reporting cycles.
- Most of the Centers reported on the adoption of the CGIAR Open Access and Data Management policy. The Centers are implementing different measures and processes to achieve the policy's objectives. For example, some Centers are providing incentives to researchers who choose to publish in Open Access journals. Also, several Centers highlighted their efforts to negotiate with periodicals/journals the publication of copyrighted materials in CGIAR's electronic library, which provides Open Access.
- The FC IP Group applauds some Centers' efforts in support of farmers' rights, including CIP's program to repatriate clean, virus and pathogen free germplasm and WorldFish's Participatory Action Research (PAR). Both programs are described in more detail in other sections of this report.
- The Nagoya Protocol, which will enter into force in the near future, will apply to CGIAR activities dealing with Non-Annex I crops, micro-organisms and animal species. In preparation, we suggest that the Consortium and Centers start looking into the interplay between the requirements under the Protocol and other applicable laws and policies, including the ongoing developments regarding the review of the Multilateral System of the ITPGRFA.

8.4 Compliance with the Principles

Based on the Centers' reports and information received from Centers, the FC IP group deemed all Centers to have complied with the CGIAR IA Principles in 2013. All Centers complied with the requirement to include research and emergency exceptions in the 7 LEAs. The Consortium reported that it approved one request from a Center to deviate from the research exemption requirement in 2013. Since, based on that Center's annual IA report, that deviation did not materialize in a LEA in 2013 the FC IP Group has not examined this request. Overall, the Centers showed that the exclusivity provided is



limited in duration, territory and/or field of use. Regarding 5 of the 7 LEAs, the FC IP Group sent follow-up questions through the Consortium Office to 5 Centers with respect to the justifications provided, and received adequate responses.

The three Centers that entered into RUAs confirmed that, to the best of their knowledge, they were unable to acquire equivalent Intellectual Assets from other sources under no or less restrictive conditions. These Centers also explained the steps taken to ensure that such third party Intellectual Assets are only used in relation to, or incorporated into, the intended products/ services. The FC IP Group sent a follow-up question through the Consortium Office to CIP in relation to the justification provided, and CIP provided an adequate response. Three Centers concluded agreements with third parties that allowed the third party to potentially apply for Plant Variety Protection over Centers' IA in specific territories for the purpose of commercialization. The Centers showed that these agreements are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries in furtherance of the CGIAR Vision.

One Center filed 6 provisional patent applications, either on its own or in collaboration with a third party. In accordance with 6.4.2 of the Principles, "The Centers shall carefully consider whether to register/ apply for (or allow third parties to register/apply for) patents and/or plant variety protection ("IP Applications") over the Centers' respective Intellectual Assets. As a general principle, such IP Applications shall not be made unless they are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision." In order to better assess compliance with Article 6.4.2, the FC IP Group addressed follow-up questions through the Consortium Office to the Center for 5 of the 6 provisional patent applications. The answers provided by the Center were satisfactory.

8.5 Recommendations

The FCIP Group has the following recommendations:

- a) That Centers provide more explanation about how their LEAs and RUAs further the CGIAR Vision including impact on target beneficiaries;
- b) That Centers seeking patent protection provide clear explanation about why they need to do so and how such protection furthers the CGIAR Vision;
- c) That the Consortium and Centers develop a CGIAR-wide IP portfolio with comprehensive information on (at a minimum) all patent and PVP applications and trademarks registrations that are filed;
- d) That Centers include a section on intellectual asset management in their future CRP proposals explaining how their use of IP tools will maximize impact;
- e) That Centers continue to strengthen their IP capacity to appropriately deal with the demands and needs.

Finally, the FC IP Group commends the Consortium's IP leadership and initiatives, which have led to substantial improvement from last year in terms of compliance, oversight, and sharing of information and best practices.